

Going it alone

Bankruptcy law may push more to riskier self-filing

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SAN FRANCISCO (MarketWatch) -- New bankruptcy rules are boosting legal costs, a side effect that will likely push more debt-laden consumers to consider going it alone in bankruptcy court.

But if you fumble a bankruptcy proceeding, representing yourself could end up costing you more than you'd save on legal fees. Many bankruptcy lawyers will say you need a lawyer; self-help-book marketers will say you don't. Here's what you need to know before deciding whether to handle it on your own.

Already, attorneys say they're charging 10% to 75% more because of the additional investigative work required under the new law, which went into effect in October, with fees for a Chapter 7 filing as high as \$1,750 versus \$1,000 before the new law, though fees vary widely by locale.

In Chapter 7, most of a consumer's debts are wiped out. Lawyers charge higher fees for the more-complex Chapter 13, in which consumers enter a repayment plan to pay back a portion of their debts.

Bankruptcy "can be an expensive proceeding, but it can be much more expensive if you don't do it properly, and it can cause you hardships that may be irreversible, such as losing a home or a car that might have been protected," said Brad Botes, a consumer bankruptcy attorney with Bond & Botes, in Birmingham, Ala.

And, many lawyers say, added paperwork requirements under the new law, plus more-stringent rules regarding erroneous filings, make self-filing an even worse idea now.

Yet, while the paperwork is daunting, some say it isn't impossible.

"It's like an income-tax form, or a Social Security application," says Steve Elias, a bankruptcy lawyer in Lakeport, Calif., and a founding editor of Nolo, publisher of self-help legal guides.

"There are a lot of 'add this line, carry this line over to here,' like on a Schedule

C...but most people aren't going to have to do that," he adds, noting that a majority of Chapter 7 filers will have income below their area's median, so their paperwork load will be reduced significantly. Nolo will release new how-to bankruptcy guides, complete with forms and updated for the new law, in 2006.

Elias recently developed a new service aimed at those who can't or won't pay the higher bankruptcy attorney's fees. For California consumers, he provides advice by telephone for a flat rate of \$100, to be used in conjunction with petition-preparer services. These are nonlawyers who aid consumers with filing bankruptcy paperwork, but who are prohibited from offering advice. See his Web site: www.bankruptcylawproject.com.

But Nathalie Martin, a professor at the University of New Mexico's School of Law and author of J.K. Lasser's "The New Bankruptcy Law and You," warns consumers to shop carefully when choosing a petition preparer. "I have seen the most horrifying mistakes and lack of understanding of the bankruptcy system by petition preparers," she says.

Elias is not the only one offering DIY services. Socrates Media, a publisher of self-help guides, based in Chicago, offers a do-it-yourself bankruptcy kit complete with forms, already updated for the new law, for about \$30, available online and in bookstores.

The company says those with complex cases -- say, a husband and wife filing together with many credit accounts, or a homeowner who owns a home in another state -- should consult an attorney before filing.

There's also "Personal Bankruptcy for Dummies" and "The Bankruptcy Kit," two of many books that educate consumers on how bankruptcy works. But these books usually advise seeking a lawyer's aid before filing.

When shopping for bankruptcy books, note that some older editions are still on store shelves. Make sure you only purchase those that are updated to reflect the new law.

It's unclear how many filers will rely on their own legal smarts under the new law. Before, self-filers were only a small portion of filers overall: About 8% of Chapter 7 filings from 2000 to 2003 were self-filers, according to the U.S. Trustee Program which oversees the administration of bankruptcy cases. Chapter 7 filings typically comprise about 70% of overall filings.

Potential missteps

Perhaps the biggest risk with self-filing is submitting an error-laden petition, and then having your case dismissed. Generally you can refile, but under the new law that second filing is a little less friendly.

With a first filing, you're granted an automatic stay which prevents most creditors from contacting you about your debts and halts foreclosures and the like while bankruptcy proceeds. Under the new law, if you have to refile, you only get a 30-day stay. You can file a motion to have the 30-day stay extended, but some self-filers may not realize that.

Another risk: Failing to understand how property can be saved under bankruptcy exemptions. For instance, a consumer might transfer his home into his brother's name to save the property, without realizing that transfer can be undone during bankruptcy proceedings.

Thus a house which might have been protected under a homestead exemption rule is lost, said Henry Sommer, president of the National Association of Consumer Bankruptcy Attorneys (www.nacba.org).

"Unless a person is extremely sophisticated, they're not going to be able to understand it all and in many cases they will make mistakes that will cost them money."

Andrea Coombes is a reporter for MarketWatch in San Francisco.